

# Legal Assistance Resource Center

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### H.B. 5440 -- Third-party visitation

Committee on Aging public hearing -- March 13, 2012

Testimony of Raphael L. Podolsky

The issue of third-party visitation is a difficult one that is complicated by a series of Connecticut Supreme Court constitutional decisions that significantly limit the General Assembly's statutory options. It also pits two competing important interests against each other -- the constitutional right of fit parents to make decisions about the raising their children and the desire of closely bonded non-parent third parties (often grandparents) who want to retain that bond, even over the objection of the child's parent or parents. The decision-making authority of parents is an established constitutional right of the parents (sometimes referred to as the right to family integrity). The involvement of the grandparents or other third party is a question of their rights than it is a form of the protection of the best interest of the child. As a starting point, it is the parents, rather than the grandparents or other third parties, who are constitutionally authorized to speak for children.

Reasonable people can differ on how these rights should be balanced. There are a diversity of opinions within the legal aid community as to what is the best legislative solution or even whether it is a good idea, as H.B. 5440 proposes, to codify the Connecticut Supreme Court decisions. After much internal discussion, we in the legal services programs recommend that, if the Committee on Aging chooses to move forward with this bill, two principal changes should be made:

(1) The bill should clearly distinguish between the two steps of the process of challenging the decision of the custodial parent or parents: (a) the threshold question as to whether there is a legally and constitutionally sufficient basis to bring the matter into court in the first place and (b) the separate question as to whether third-party visitation is in the best interest of the child and, if so, what the nature of that visitation should be. To address this distinction properly, lines 24-29 of the bill should be changed to read:

*[Subject to subsection (e) of this section, the court shall grant the right of visitation with any minor child to any person if] If the court finds after hearing and by clear and convincing evidence that a parent-like relationship exists between the applicant [person] and the minor child and that denial of visitation would cause real and significant harm to the child, the court shall, subject to subsection (e) of this section, determine whether visitation is in the best interest of the child and, if so, determine the nature of such visitation, subject to such conditions and limitations as it deems in the best interest of the child.*

In legal terms, this is the difference between codifying the Supreme Court case of Roth v. Weston, 259 Conn. 202 (2002), rather than the Supreme Court case of DiGiovanni v. St. George, 300 Conn. 59 (2011). The proposed language more clearly separates the legal jurisdictional requirement laid out by the courts (parent-like relationship and harm to the

child) from the substantive decision (whether and what kind of visitation is in the best interest of the child).

(2) The bill should make clear that a third-party visitation order can be issued only if actual notice of the proceeding has been received by the custodial parent. So-called "substitute" service should not be permitted where a non-parent is claiming the right to see a child. The following sentence should be inserted into line 24:

*Such petition shall be served by actual and not substitute service upon the person or persons having custody or guardianship of the child.*

Several other drafting changes should also be made to make the bill better conform to the recommendations of the Grandparent Visitation Task Force:

(1) Lines 17-19 should be changed to read:

*(2) "Real and significant harm" means ~~[that the minor child is]~~ real and significant harm to the minor child that is analogous to the degree of harm contemplated by the terms "neglected" or "uncared for," as defined in section 46b-120 ~~[or uncared for, as defined in said section].~~*

(2) "Any person," "person," or "the person seeking visitation..." should be changed to "the applicant" in lines 23, 31, 33, 36, 38, 40, and 46.

(3) The phrase "to the child" should be inserted after "minor child" in lines 23 and 29.